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AB-695 Community college facilities: design-build contracts. (2019-2020)

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Assembly Bill No. 695

CHAPTER 492

An act to amend Sections 81703, 81704, and 82542 of, to add Section 81709 to, and to repeal Chapter 3.5 (commencing with Section 81700) of Part 49 of Division 7 of Title 3 of, the Education Code, and to repeal Section 4 of Chapter 637 of the Statutes of 2002, relating to community colleges.

[Approved by Governor October 03, 2019. Filed with Secretary of State October 03, 2019.]

LEGISLATIVE COUNSEL'S DIGEST

AB 695, Medina. Community college facilities: design-build contracts.

(1) Existing law authorizes a community college district until January 1, 2020, to enter into a design-build contract for both the design and construction of a facility if specified requirements are met.

Existing law relating to school facilities, until January 1, 2025, authorizes a school district, with the approval of the governing board of the school district, to procure design-build contracts for certain public works projects, as provided, and prohibits a design-build entity from being prequalified or shortlisted unless the entity provides an enforceable commitment to the school district that the entity and its subcontractors at every tier will use a skilled and trained workforce to perform all work on the project or contract that falls within an apprenticeable occupation in the building and construction trades.

This bill would prohibit a design-build entity, on or after July 1, 2020, from being prequalified or shortlisted for a design-build contract by a community college district unless the entity provides to the community college district a similar enforceable commitment with respect to the use of a skilled and trained workforce. This bill would authorize a design-build entity to comply with the bill's provisions for contracts advertised for bid or awarded before July 1, 2020, in lieu of complying with the analogous previously applicable provisions, if the entity requests to do so and the community college district grants the request. The bill would extend the authorization for community college districts to enter into design-build contracts to January 1, 2030. The bill would also make conforming changes.

(2) Existing law limits the amount the governing board of a community college district may charge nonprofit organizations and clubs and associations organized for general character building or welfare purposes to use college facilities or grounds for those purposes. Existing law, for use of college facilities or grounds for other purposes, authorizes the governing board of a community college to charge an amount not to exceed its direct costs or not to exceed fair rental value, as those terms are defined, of the college facilities and grounds. Existing law, until January 1, 2020, authorizes a community college to charge as direct costs the share of costs for maintenance, repair, restoration, and refurbishment proportional to the entity's use of the college facilities or grounds.

This bill would extend the operation of this last authorization by 5 years. By imposing additional duties on community college districts, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to the statutory provisions noted above.

Vote: majority Appropriation: no Fiscal Committee: yes Local Program: yes

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 81703 of the Education Code is amended to read:

81703. Design-build projects shall progress as follows:

(a) (1) The community college district governing board shall prepare a request for proposal setting forth the scope of the project that may include, but is not limited to, the size, type, and desired design character of the buildings and site, performance specifications covering the quality of materials, equipment, and workmanship, preliminary plans or building layouts, or any other information deemed necessary to describe adequately the community college district's needs. The performance specifications and any plans shall be prepared by a design professional duly licensed or registered in this state to perform the services required by the Field Act, as defined in Section 17281. The request for proposal shall not include a design-build-operate contract for educational facilities pursuant to this chapter.

(2) Each request for proposal shall do all of the following:

(A) Identify the basic scope and needs of the project or contract, the expected cost range, and other information deemed necessary by the community college district to inform interested parties of the contracting opportunity.

(B) Invite interested parties to submit competitive sealed proposals in the manner prescribed by the community college district.

(C) Include a section identifying and describing the following:

(i) All significant factors and subfactors that the community college district reasonably expects to consider in evaluating proposals, including cost or price and all nonprice related factors and subfactors.

(ii) The methodology and rating or weighting scheme that will be used by the community college district governing board in evaluating competitive proposals and specifically whether proposals will be rated according to numeric or qualitative values.

(iii) The relative importance or weight assigned to each of the factors identified in the request for proposal.

(iv) As an alternative to clause (iii), the governing board of a community college district shall specifically disclose whether all evaluation factors other than cost or price, when combined, are any of the following:

(I) Significantly more important than cost or price.

(II) Approximately equal in importance to cost or price.

(III) Significantly less important than cost or price.

(v) If the community college district governing board wishes to reserve the right to hold discussions or negotiations with responsive bidders, it shall so specify in the request for proposal and shall publish separately or incorporate into the request for proposal applicable rules and procedures to be observed by the community college district to ensure that any discussions or negotiations are conducted in a fair and impartial manner.

(3) Notwithstanding Section 4-315 of Title 24 of the California Code of Regulations, an architect or structural engineer who is party to a design-build entity may perform the services set forth in Section 81138.

(b) The community college district shall establish a procedure to prequalify design-build entities based on the requirements specified in subdivision (b) of Section 17250.25.

(c) (1) On or after July 1, 2020, a design-build entity shall not be prequalified or shortlisted unless the entity provides an enforceable commitment to the community college district that the entity and its subcontractors at every tier will use a skilled and trained workforce to perform all work on the project or contract that falls within an apprenticeable occupation in the building and construction trades, in accordance with Chapter 2.9 (commencing with Section 2600) of Part 1 of Division 2 of the Public Contract Code.

(2) This subdivision shall not apply if any of the following requirements are met:

(A) The community college district has entered into a project labor agreement that will bind all contractors and subcontractors performing work on the project or contract to use a skilled and trained workforce, and the entity agrees to be bound by that project labor agreement.

(B) The project or contract is being performed under the extension or renewal of a project labor agreement that was entered into by the community college district before July 1, 2020.

(C) The entity has entered into a project labor agreement that will bind the entity and all its subcontractors at every tier performing the project or contract to use a skilled and trained workforce.

(3) For purposes of this subdivision, "project labor agreement" has the same meaning as in paragraph (1) of subdivision (b) of Section 2500 of the Public Contract Code.

(d) The community college district shall establish a procedure for final selection of the design-build entity. Selection shall be based on either of the following criteria:

(1) A competitive bidding process resulting in lump-sum bids by the prequalified or shortlisted design-build entities. Award shall be made on the basis of the lowest responsible bid.

(2) Notwithstanding any other provision of this code or of Section 20650 of the Public Contract Code, a community college district may use a design-build competition based upon performance and other criteria set forth by the governing board of the community college district in the solicitation of proposals from prequalified or shortlisted design-build entities. Criteria used in this evaluation of proposals may include, but need not be limited to, the proposed design approach, life-cycle costs, project features, and project functions. However, competitive proposals shall be evaluated by using the criteria and source selection procedures specifically identified in the request for proposal. Once the evaluation is complete, all responsive bidders shall be ranked from the most advantageous to least advantageous to the community college district. A community college district that limits the number of responsible bidders participating in the design-build competition, at any time after a request for a proposal has been issued, shall use the source selection procedures and minimum factors set forth in subparagraph (C).

(A) An architectural firm, engineering firm, construction manager, contractor, subcontractor, consultant, or individual retained by the governing board of the community college district directly or indirectly before the award of the project to assist in the planning of the project, including, but not necessarily limited to, the development criteria or preparation of the request for proposal, shall not be eligible to participate in the competition with the design-build entity or to perform work on the project as a subcontractor.

(B) The award of the contract shall be made to the responsible bidder whose proposal is determined, in writing by the community college district, to be the best value to the community college district.

(C) Proposals shall be evaluated and scored solely on the basis of the factors and source selection procedures identified in the request for proposal. However, the following minimum factors shall each represent at least 10 percent of the total weight or consideration given to all criteria factors: price, technical expertise, life-cycle costs over 15 years or more, acceptable safety record, and, on or before July 1, 2020, skilled labor force availability.

(D) The community college district governing board shall issue a written decision supporting its contract award and stating in detail the basis of the award. The decision and the contract file must be sufficient to satisfy an external audit.

(E) Notwithstanding any provision of the Public Contract Code, upon issuance of a contract award, the community college district governing board shall publicly announce its awards identifying the contractor to whom the award is made, the winning contractor's price proposal and its overall combined rating on the request for proposal evaluation factors. The notice of award shall also include the agency's ranking in relation to all other responsive bidders and their respective price proposals and a summary of the community college district's rationale for the contract award.

(F) For purposes of this chapter, "skilled labor force availability" means that an agreement exists with a registered apprenticeship program that has been approved pursuant to Chapter 4 (commencing with Section 3070) of Division 3 of the Labor Code and has graduated apprentices in each of the immediately preceding five years. This graduation requirement shall not apply to programs providing apprenticeship training for any craft that has not been deemed by the Department of Labor and the Department of Industrial Relations to be an apprenticeable craft in the five years before enactment of the act adding this section.

(G) For purposes of this chapter, a bidder's "safety record" shall be deemed "acceptable" if its experience modification rate for the most recent three-year period is an average of 1.00 or less, and its average total recordable injury or illness rate and average lost work rate for the most recent three-year period does not exceed the applicable statistical standards for its

business category, or if the bidder is a party to an alternative dispute resolution system as provided for in Section 3201.5 of the Labor Code.

(H) For purposes of this chapter, when a community college district determines a design-build entity's "experience," the community college district shall give credit only to design-build experience and to California school design and construction experience.

SEC. 2. Section 81704 of the Education Code is amended to read:

81704. (a) Any design-build entity that is selected to design and build a project pursuant to this chapter shall possess or obtain sufficient bonding to cover the contract amount for nondesign services, and errors and omission insurance coverage sufficient to cover all design and architectural services provided in the contract. This chapter does not prohibit a general or engineering contractor from being designated the lead entity on a design-build entity for the purposes of purchasing necessary bonding to cover the activities of the design-build entity.

(b) Any payment or performance bond written for the purposes of this chapter shall use a bond form developed by the Department of General Services pursuant to subdivision (g) of Section 14661 of the Government Code. The purpose of this subdivision is to promote uniformity of bond forms to be used on community college district design-build projects throughout the state.

(c) (1) All subcontracts that were not listed by the design-build entity in accordance with Section 81703 shall be awarded by the design-build entity in accordance with the design-build process set forth by the community college district in the design-build package.

(2) The design-build entity shall do all of the following:

(A) Provide public notice of the availability of work to be subcontracted.

(B) Provide a fixed date and time on which the subcontracted work will be awarded.

(3) Subcontractors bidding on contracts pursuant to this subdivision shall be afforded the protections contained in Chapter 4 (commencing with Section 4100) of Part 1 of Division 2 of the Public Contract Code.

(4) (A) If the community college district elects to award a project pursuant to this section, retention proceeds withheld by the community college district from the design-build entity shall not exceed 5 percent if a performance and payment bond, issued by an admitted surety insurer, is required in the solicitation of bids.

(B) In a contract between the design-build entity and a subcontractor, and in a contract between a subcontractor and any subcontractor thereunder, the percentage of the retention proceeds withheld shall not exceed the percentage specified in the contract between the community college district and the design-build entity. If the design-build entity provides written notice to any subcontractor who is not a member of the design-build entity, before or at the time the bid is requested, that a bond may be required and the subcontractor subsequently is unable or refuses to furnish a bond to the design-build entity, then the design-build entity may withhold retention proceeds in excess of the percentage specified in the contract between the community college district and the design-build entity from any payment made by the design-build entity to the subcontractor.

(5) In accordance with the provisions of applicable state law, the design-build entity may be permitted to substitute securities in lieu of the withholding from progress payments. Substitutions shall be made in accordance with Section 22300 of the Public Contract Code.

(d) (1) For contracts for public works projects awarded before January 1, 2012, the community college district shall establish and enforce a labor compliance program containing the requirements outlined in Section 1771.5 of the Labor Code or shall contract with a third party to operate a labor compliance program containing the requirements outlined in Section 1771.5 of the Labor Code. This requirement shall not apply to projects where the community college district or the design-build entity has entered into a collective bargaining agreement that binds all of the contractors performing work on the project.

(2) For contracts for public works projects awarded on or after January 1, 2012, until July 1, 2020, the project shall be subject to the requirements of Section 1771.4 of the Labor Code.

SEC. 3. Section 81709 is added to the Education Code, to read:

81709. This chapter shall remain in effect only until January 1, 2030, and as of that date is repealed, unless a later enacted statute that is enacted before January 1, 2030, deletes or extends that date.

SEC. 4. Section 82542 of the Education Code, as amended by Section 30 of Chapter 33 of the Statutes of 2018, is amended to read:

82542. (a) Except as provided in subdivision (b), the governing board of a community college district shall grant without charge the use of any college facilities or grounds under its control, pursuant to the requirements of this article, when an alternative location is not available, to nonprofit organizations and clubs and associations organized for general character building or welfare purposes, such as:

- (1) Student clubs and organizations.
- (2) Fundraising entertainments or meetings where admission fees charged or contributions solicited are expended for the welfare of the students of the district.
- (3) Parent-teachers' associations.
- (4) School-community advisory councils.
- (5) Camp Fire Girls, Girl Scout troops, and Boy Scout troops.
- (6) Senior citizens' organizations.
- (7) Other public agencies.
- (8) Organizations, clubs, or associations organized for cultural activities and general character building or welfare purposes, such as folk and square dancing.
- (9) Groups organized for the purpose specified in subdivision (k).

(b) The governing board may charge those organizations and activities listed in subdivision (a) an amount not to exceed the following:

- (1) The cost of opening and closing the facilities, if no college employees would otherwise be available to perform that function as a part of their normal duties.
- (2) The cost of a college employee's presence during the organization's use of the facilities, if the governing board determines that the supervision is needed, and if that employee would not otherwise be present as part of the employee's normal duties.
- (3) The cost of janitorial services, if the services are necessary, and would not have otherwise been performed as part of the janitor's normal duties.
- (4) The cost of utilities directly attributable to the organization's use of the facilities.

(c) The governing board may charge an amount not to exceed its direct costs or not to exceed fair rental value of college facilities and grounds under its control, and pursuant to the requirements of this article, for activities other than those specified in subdivision (a). A governing board that decides to levy these charges shall first adopt a policy specifying which activities shall be charged an amount not to exceed direct costs and which activities shall be charged an amount not to exceed fair rental value.

(d) (1) As used in this section, "direct costs" to the district for the use of college facilities or grounds includes all of the following:

(A) The share of the costs of supplies, utilities, janitorial services, services of any other district employees, and salaries paid to community college district employees to operate and maintain college facilities or grounds that is proportional to the organization's use of the college facilities and grounds of the district under this section.

(B) The share of the costs for maintenance, repair, restoration, and refurbishment, proportional to the use of the college facilities or grounds by the organization using the college facilities or grounds under this section. For purposes of this subparagraph, "college facilities" shall be limited to only nonclassroom space, and "grounds" shall include, but not be limited to, playing fields, athletic fields, track and field venues, tennis courts, and outdoor basketball courts.

(2) The share of the costs for maintenance, repair, restoration, and refurbishment shall not apply to either of the following:

(A) Classroom-based programs that operate after school hours, including, but not limited to, after school programs, tutoring programs, or child care programs.

(B) Organizations retained by the college or community college district to provide instruction or instructional activities to students during school hours.

(3) Funds collected pursuant to this subdivision shall be deposited into a special fund that shall only be used for purposes of this section.

(e) By December 31, 2015, the Chancellor of the California Community Colleges shall develop, and the Board of Governors of the California Community Colleges shall adopt, regulations to be used by a governing board of a community college district in determining the proportionate share and the specific allowable costs that a community college district may include as direct costs for the use of its college facilities or grounds.

(f) As used in this section, "fair rental value" means the direct costs to the district, plus the amortized costs of the college facilities or grounds used for the duration of the activity authorized.

(g) The governing board of a community college district that authorizes the use of college facilities or grounds for the purpose specified in subdivision (h) shall charge the church or religious denomination an amount at least equal to the fair rental value of the facilities or grounds.

(h) The governing board of a community college district may grant the use of college facilities or grounds to any church or religious organization for the conduct of religious services for temporary periods where the church or organization has no suitable meeting place for the conduct of these services upon the terms and conditions as the board deems proper, and subject to the limitations, requirements, and restrictions set forth in this article. The governing board shall charge the church or religious organization using the property for the conduct of religious services a fee as specified in subdivision (g).

(i) For entertainment or a meeting where an admission fee is charged or a contribution is solicited and the net receipts of the admission fees or contributions are not expended for the welfare of the students of the district or for charitable purposes, a charge not less than fair rental value shall be levied for the use of the college facilities, property, and grounds, as determined by the governing board of the district.

(j) The governing board may permit the use, without charge, by organizations, clubs, or associations organized for senior citizens and for cultural activities and general character building or welfare purposes, when membership dues or contributions solely for the support of the organization, club, or association, or the advancement of its cultural, character building, or welfare work, are accepted.

(k) The governing board of a community college district may grant the use of college facilities, grounds, and equipment to public agencies, including the American Red Cross, for mass care and welfare shelters during disasters or other emergencies affecting the public health and welfare, and may cooperate with these agencies in furnishing and maintaining services deemed by the governing board to be necessary to meet the needs of the community.

(l) This section shall remain in effect only until January 1, 2025, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2025, deletes or extends that date.

SEC. 5. Section 82542 of the Education Code, as amended by Section 128 of Chapter 303 of the Statutes of 2015, is amended to read:

82542. (a) Except as provided in subdivision (b), the governing board of a community college district shall grant without charge the use of any college facilities or grounds under its control, pursuant to the requirements of this article, when an alternative location is not available, to nonprofit organizations and clubs and associations organized for general character building or welfare purposes, such as:

(1) Student clubs and organizations.

(2) Fundraising entertainments or meetings where admission fees charged or contributions solicited are expended for the welfare of the students of the district.

(3) Parent-teachers' associations.

(4) School-community advisory councils.

(5) Camp Fire Girls, Girl Scout troops, and Boy Scout troops.

(6) Senior citizens' organizations.

(7) Other public agencies.

(8) Organizations, clubs, or associations organized for cultural activities and general character building or welfare purposes, such as folk and square dancing.

(9) Groups organized for the purpose specified in subdivision (g).

(b) The governing board may charge those organizations and activities listed in subdivision (a) an amount not to exceed the following:

(1) The cost of opening and closing the facilities, if no college employees would otherwise be available to perform that function as a part of their normal duties.

(2) The cost of a college employee's presence during the organization's use of the facilities, if the governing board determines that the supervision is needed, and if that employee would not otherwise be present as part of the employee's normal duties.

(3) The cost of janitorial services, if the services are necessary, and would not have otherwise been performed as part of the janitor's normal duties.

(4) The cost of utilities directly attributable to the organization's use of the facilities.

(c) The governing board may charge an amount not to exceed its direct costs or not to exceed fair rental value of college facilities and grounds under its control, and pursuant to the requirements of this article, for activities other than those specified in subdivision (a). A governing board that decides to levy these charges shall first adopt a policy specifying which activities shall be charged an amount not to exceed direct costs and which activities shall be charged an amount not to exceed fair rental value.

(1) As used in this section, "direct costs" to the district for the use of college facilities or grounds means those costs of supplies, utilities, janitorial services, services of any other district employees, and salaries paid community college district employees necessitated by the organization's use of the college facilities and grounds of the district.

(2) As used in this section, "fair rental value" means the direct costs to the district, plus the amortized costs of the college facilities or grounds used for the duration of the activity authorized.

(d) The governing board of a community college district that authorizes the use of college facilities or grounds for the purpose specified in subdivision (e) shall charge the church or religious denomination an amount at least equal to the fair rental value of the facilities or grounds.

(e) The governing board of a community college district may grant the use of college facilities or grounds to any church or religious organization for the conduct of religious services for temporary periods where the church or organization has no suitable meeting place for the conduct of these services upon the terms and conditions as the board deems proper, and subject to the limitations, requirements, and restrictions set forth in this article. The governing board shall charge the church or religious organization using the property for the conduct of religious services a fee as specified in subdivision (d).

(f) For entertainment or a meeting where an admission fee is charged or a contribution is solicited and the net receipts of the admission fees or contributions are not expended for the welfare of the students of the district or for charitable purposes, a charge shall be made for the use of the college facilities, property, and grounds, which charge shall not be less than the fair rental value for the use of the college facilities, property, and grounds, as determined by the governing board of the district.

(g) The governing board may permit the use, without charge, by organizations, clubs, or associations organized for senior citizens and for cultural activities and general character building or welfare purposes, when membership dues or contributions solely for the support of the organization, club, or association, or the advancement of its cultural, character building, or welfare work, are accepted.

(h) The governing board of a community college district may grant the use of college facilities, grounds, and equipment to public agencies, including the American Red Cross, for mass care and welfare shelters during disasters or other emergencies affecting the public health and welfare, and may cooperate with these agencies in furnishing and maintaining services deemed by the governing board to be necessary to meet the needs of the community.

(i) This section is operative on and after January 1, 2025.

SEC. 6. Section 4 of Chapter 637 of the Statutes of 2002, as amended by Section 6 of Chapter 736 of the Statutes of 2012, is repealed.

SEC. 7. (a) The amendments made by this act to Sections 81703 and 81704 of the Education Code shall not apply to contracts that were advertised for bid or awarded before July 1, 2020.

(b) For contracts advertised for bid or awarded before July 1, 2020, for which an entity or contractor provided an enforceable commitment to a community college district regarding the use of a skilled and trained workforce, pursuant to Section 81703 of the Education Code, the community college district may grant a request by the entity or contractor that made the enforceable commitment to comply instead with this act.

SEC. 8. If the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code.